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*Attorneys for Defendants*  
*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability  
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL  
CERTAIN EXHIBITS IN  
SUPPORT OF BARD'S MOTION  
TO EXCLUDE THE OPINIONS  
OF SUZANNE PARISIAN, M.D.  
AND MEMORANDUM OF LAW  
IN SUPPORT**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively  
"Bard") hereby respectfully move this Court, pursuant to the Stipulated Protective Order  
(Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for  
leave to file under seal certain exhibits attached in support of Bard's Motion to Exclude  
the Opinions of Suzanne Parisian, M.D. and Memorandum of Law in Support. These

exhibits, contain certain trade secrets and confidential information that are protected under the Stipulated Protective Order, warranting protection from public disclosure. Accordingly, there is good cause to grant Defendants' Motion for Leave to File Under Seal Certain Exhibits in Support of Bard's Motion to Exclude the Opinions of Suzanne Parisian, M.D. and Memorandum of Law in Support. Defendants have notified Plaintiffs of their intent to file this Motion. Plaintiffs have agreed to the filing of such motions in the past; however, to date, Plaintiffs' have not yet responded to Defendants' attempts to meet and confer on whether Plaintiffs oppose the Motion once Plaintiffs have had an opportunity to review the documents in issue. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

### **ARGUMENT AND CITATION OF AUTHORITY**

"When a court grants a protective order for information produced during discovery, it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-1780-PHX-JAT, 2012 WL 2260928 at \*2 (D. Ariz. June 15, 2012) (sealing exhibits related to "Medicis' marketing strategy, Acella's product formulation,...various emails and deposition transcripts, viscosity test data, sales and marketing information, and various other documents" because "[m]uch of this information has been previously sealed by the Court, has been designated as confidential by the parties pursuant to the protective order in this case, or could otherwise potentially harm the parties if released publicly because of its confidential and sensitive nature.").

Certain exhibits to Bard's Motion to Exclude the Opinions of Suzanne Parisian, M.D., specifically Exhibit A (Dr. Parisian's Expert Report), and Exhibit B (Dr. Parisian's Supplemental Expert Report) (collectively "Reports"), contain pieces of highly competitive, confidential, proprietary information that warrant protection under Federal Rule of Civil Procedure 26(c)(1)(G) because the documents are not made public by Bard

1 and, if obtained by Bard's competitors, could give an unfair economic advantage to those  
 2 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL  
 3 737485, at \*5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d  
 4 772, 786 (3d Cir. 1994)). Dr. Parisian's Reports cite and extensively quote dozens of  
 5 confidential Bard documents, including technical and design files, testing documents,  
 6 internal documents regarding Bard's purchase of a predecessor company, adverse event  
 7 documents including specific references to patients by age and complication, design and  
 8 risk management documents, and numerous internal emails between high-level Bard  
 9 employees. The Reports quote so extensively from confidential documents that filing the  
 10 Reports is akin to filing the documents themselves. Except for a small number of patent  
 11 and other public documents, all of the Bard documents cited in the Reports were produced  
 12 to Plaintiffs as "Confidential – Subject to Protective Order" on each page pursuant to  
 13 Stipulated Protective Order (Doc. 269) ¶ 6.

14 The public disclosure of these exhibits would reveal confidential, proprietary and  
 15 trade secret information and would create a heightened risk of irreparable harm to Bard's  
 16 competitive business concerns. Further, its inclusion in the public record would not only  
 17 harm Bard because of the trade secrets and confidential information it contains, but it  
 18 would also eviscerate the significant time and resources Bard has expended in protecting  
 19 its business information. The potential for abuse and for competitive loss are real.  
 20 Accordingly, Defendants request that the exhibits identified in Exhibit A be sealed.

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1                   RESPECTFULLY SUBMITTED this 24th day of August, 2017.

2                   s/Taylor Tapley Daly  
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**CERTIFICATE OF SERVICE**

I hereby certify that August 24, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Taylor Tapley Daly  
Taylor Tapley Daly

**EXHIBIT A**

**DOCUMENTS PROPOSED TO BE FILED UNDER SEAL**

Defendants request they be permitted to file under seal the following documents in support of their Motion to Exclude the Opinions of Suzanne Parisian, M.D. and Memorandum of Law in Support.

Exhibit A. Expert Report of Suzanne Parisian, M.D.

Exhibit B. Supplemental Expert Report of Suzanne Parisian, M.D.